

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2009-018

June 16, 2009

	Procedures for the Payment of Awards of Litigation or Administrative	Upon incorporation
Subject:	Costs under Section 7430	Cancel Date: into the CCDM

Purpose

This Notice updates the procedures to be followed when a taxpayer is awarded litigation or administrative costs under I.R.C. § 7430, including awards made pursuant to a settlement. Additionally, this Notice reminds attorneys of their obligation to promptly submit to the National Office the requisite paperwork needed for the timely processing and payment of attorney fee awards.

Background

Section 7430 provides that in any administrative or court proceeding that is brought by or against the United States in connection with the determination, collection or refund of any tax, interest or penalty under Title 26, if certain requirements are satisfied, the prevailing party (other than the United States or any creditor of the taxpayer) may be awarded reasonable administrative costs incurred in connection with an administrative proceeding within the Internal Revenue Service or reasonable litigation costs incurred in connection with a court proceeding.

The procedures for submitting attorney fee awards for processing and payment are set forth in CCDM 35.10.1.1.3.2. Unfortunately, that provision was drafted a very long time ago and was not updated when the CCDM was completely restructured in 2004. Hence, that provision is woefully out of date and does not reflect the current procedures for the processing and payment of attorney fee awards.

In this regard, although some of the offices referenced in the CCDM have changed, as well as the use of certain forms, the overall approach to the processing and payment of attorney fee awards has basically remained the same. Nonetheless, over the last few years, there have been an increasing number of cases in which the attorney assigned to the case did not submit the requisite paperwork to the National Office for the processing and payment of an attorney fee award. In those cases, these awards came to the National Office's attention for the first time when the attorney contacted the National Office to inquire about the status of the payment in response to an inquiry from the taxpayer's representative or the Tax Court Judge many months after the decision including the attorney fee award was entered by the Tax Court. As set forth

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below, our procedures provide that it is the responsibility of the attorney assigned to the case to submit the requisite paperwork to the National Office so that the National Office can begin the process leading to the payment or offset of the attorney fee award, as appropriate.

Procedure

Awards for litigation or administrative costs are paid from the General Judgment Fund. 31 U.S.C. § 1304. The General Judgment Fund is administered by the Judgment Fund Branch of the Financial Management Service, Department of Treasury. If an attorney fee award has been made in a Tax Court case, either as the result of litigation or settlement of the issue, the attorney to whom the case is assigned should complete an Award Data Sheet. See Exhibit A. To facilitate the proper and expeditious handling of the attorney fee award, all of the information specified on the Award Data Sheet must be provided. Instructions on how to complete the items requested on the Award Data Sheet are provided in footnotes to the Award Data Sheet. In this regard, particular attention should be given to item H, BRIEF STATEMENT OF WHY THE AWARD WAS MADE. As explained in the accompanying footnote, this should not be a statement of the legal issue. Similarly, a statement that the award was ordered by the court or our position was not substantially justified is not sufficient. An example of an acceptable statement would be: "The taxpayer provided substantiation of his claimed Schedule C expenses to the Service prior to the issuance of the notice of deficiency. Consequently, the statutory notice should not have been issued. Although the issue was ultimately settled after the taxpayer filed a petition in the Tax Court, the taxpayer unnecessarily was forced to incur attorney fees and costs to resolve the matter." Another example would be: "The taxpayer submitted a qualified offer that was not accepted by the Service. The amount of the taxpayer's liability pursuant to the Tax Court's decision is less than what the liability would have been under the qualified offer had it been accepted by the Service. Therefore, the taxpayer is entitled to recover reasonable litigation costs pursuant to the qualified offer rule."

The Award Data Sheet, together with a copy of the entered Decision reflecting the attorney fee award, should be sent to the Disclosure & Litigation Support Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) [CC:PA:LPD:DLS]. In general, the Award Data Sheet and a copy of the Decision should be sent to the National Office within 10 calendar days of the **earlier** of (1) the date the Decision becomes final or (2) if the Decision is wholly adverse to the Government, the date the attorney is informed that the Government decided not to seek further review of the Decision. Upon receiving the specified information regarding the attorney fee award, PA's Disclosure & Litigation Support Branch will prepare the requisite FMS Forms and submit the completed claim package to the FMS Judgment Fund Branch for processing and approval. When the attorney fee award claim is approved by the Judgment Fund Branch, it is transferred electronically to the Financial Accounting and Services Division Accounting System (FASDAS) for payment. Certified payment requests are transmitted to Treasury's Philadelphia Finance Center, which actually disburses the funds.

If the Decision that is entered by the Tax Court reflects a deficiency that is owed by the taxpayer and awards attorney fees to the taxpayer, the attorney fee award normally will be offset against the unpaid deficiency. In those cases, the attorney should state on the Award Data Sheet that an offset should be made and the amount of the offset. In this regard, the amount of the award that is eligible to be offset is limited to any unpaid deficiency that is determined in the Tax Court's Decision that contains the award, exclusive of interest, regardless of whether the interest has been assessed. FMS will **not** offset interest. Consequently, do not include any unpaid interest in the offset amount.

To the extent that the attorney fee award exceeds the amount of the offset, if any, it is the policy and practice of the Office of Chief Counsel to have the attorney fee award check issued in the name(s) of the taxpayer(s), not the taxpayer's representative. The check is mailed, however, to the attention of the Chief Counsel attorney at the appropriate office address. Upon receipt, it is the responsibility of that attorney to deliver the check to the taxpayer's representative. The check should not be given to the taxpayer. This procedure was adopted by our office to avoid involvement in fee disputes between the taxpayer and the taxpayer's representative. Accordingly, there should be no deviation from this procedure.

The process described above should normally take approximately 6-8 weeks once the attorney fee award claim package is submitted to the Judgment Fund Branch. The submission of all paperwork to, and communications with, the Judgment Fund Branch and Treasury regarding the processing, status updates or payment of attorney fee awards are the sole responsibility of the Office of the Associate Chief Counsel (Procedure and Administration). The attorney assigned to the case should not communicate or send anything relating to the attorney fee award directly to the Judgment Fund Branch or other parts of Treasury.

Any questions regarding this Notice should be addressed to Procedure and Administration Branch 5 at (202) 622-3620.

/s/
Deborah A. Butler
Associate Chief Counsel
(Procedure and Administration)

Exhibit A- Award Data Sheet

- A. CASE CAPTION AND DOCKET NO.
- B. NAME AND ADDRESS OF PAYEE(S)¹
- C. PAYEE(S) TAX IDENTIFICATION NUMBER²
- D. NAME, ADDRESS AND TELEPHONE NUMBER OF PETITIONER'S COUNSEL³
- E. TOTAL AMOUNT OF AWARD⁴
- F. BREAKDOWN BETWEEN ATTORNEY'S FEES AND OTHER COSTS
- G. AMOUNT TO BE OFFSET, IF ANY⁵
- H. BRIEF STATEMENT OF WHY THE AWARD WAS MADE⁶
- I. WAS THE AWARD THE RESULT OF A SETTLEMENT? Y OR N
IF YES, WAS THE AWARD APPROVED BY THE APPROPRIATE OFFICIAL?⁷

IMPORTANT: ATTACH COPY OF DECISION ENTERED BY THE TAX COURT

If you have any questions concerning this matter, please contact [name] at [telephone number].

¹ Name(s) of payee(s) must be exactly as set forth in court's Order or stipulation of settlement.

² If there are multiple payees, e.g., husband and wife, include tax identification number for each payee.

³ In general, the check will be made payable to the payee(s) but delivered to petitioner's counsel.

⁴ Amount includes attorney's fees, costs, experts, etc.

⁵ For this purpose only, the amount of the award that is eligible to be offset is limited to any unpaid deficiency that is determined in the court's Decision that contains the award, exclusive of interest, regardless of whether the interest has been assessed.

⁶ This should not be a statement of the legal issue. Similarly, a statement that the award was ordered by the court or our position was not substantially justified is not sufficient.

⁷ Settlement of administrative costs in excess of \$5,000 and settlement of litigation costs in excess of \$25,000 must be approved by the Associate Chief Counsel (Procedure and Administration).